Spain's Tax Implications on Cryptocurrency Activities and Operations

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The purpose of this article was to attempt to shed light on the taxation of activities or actions related to cryptocurrencies. For this purpose, a small analysis was carried out on the nature, operation, and characteristics of cryptocurrencies. Subsequently, from the point of view of the Spanish tax system, the tax implications of the use, actions, and operations carried out with this virtual medium were discussed. The most recent information derived from the binding inquiries issued by the general directorate of taxes in Spain, an institution under the Ministry of Finance, was reviewed. This article analyzed whether the activities related to Bitcoin should be declared for the purposes of personal income tax, property tax, inheritance tax and finally, in the tax on transmissions of assets and documented legal acts. Finally, special mention was made of activities, such as the mining of Bitcoins in "Bitcoin farms" and the exploitation of websites for buying and selling cryptocurrencies and vending machines. Other collateral situations were also analyzed, such as the system to be used.

Keywords: Taxation; Cryptocurrency; Bitcoin; Bitcoin Mining; Bitcoin Farming

INTRODUCTION

In recent years, the term "cryptocurrency", devised by bitcoin, has begun to be part of our everyday vocabulary. The media have often echoed these "currencies" and reported on how they are gradually being used by a greater number of people, in many cases as an investment element with which to try to obtain great returns. Moreover, relatively recently, a subject put his house on sale on "Bitcoin", and others are engaged in the so-called "mining" of cryptocurrencies, mainly Bitcoin, as this is the best-known form. Thus, we analyzed how society is beginning to use this medium in everyday activities as a business or as an investment tool. Given the possibility of using these so-called

International Journal of Stress Management
2019, Vol. 26, No. 3, 1–16

"digital currencies" as a means of payment/collection, as a financial investment instrument, and for other activities, it is necessary to analyze them from a fiscal point of view. The monetary importance of these cryptocurrencies today is presented in Table 1 below.

As Table 1 shows, bitcoin, the most famous cryptocurrency, is the one with the highest market capitalization and a higher unit price, calculated in US dollars. However, other cryptocurrencies have followed the example of Bitcoin and settled into the market, such as Ripple, Ethereum and Litecoin, to name a few.

If we add the market capitalization of the first 10 cryptocurrencies listed, we obtain a result of $12.171 Bn. All this has aroused the interest of investors, individuals, and companies, who have begun to use this new virtual currency every day. Given the novelty, doubts have arisen in the field of taxation on how to proceed. The purpose of this article was to analyze the current situation in Spain. However, the first step is to define cryptocurrency.

Table 1. The 10 most important cryptocurrencies by market capitalization.

Position	Name	Symbol	Price (USD) *	Market in Billions of Dollars
1	Bitcoin	BTC	4.109.30	$72.90 Bn
2	Ripple	XRP	0.42465	$17.42 Bn
3	Ethereum	ETH	143.62	$15.16 Bn
4	Bitcoin Cash	BCH	200.92	$3.57 Bn
5	EOS	EOS	2.9232	$2.67 Bn
6	Stellar	XLM	0.1333	$2.59 Bn
7	Litecoin	LTC	34.554	$2.10 Bn
8	Bitcoin SV	BSV	106.76	$1.90 Bn
9	Tether	USDT	1.00821	$1.89 Bn
10	TRON	TRX	0.02237	$1.51 Bn

* All data as of 24 December 2018. Source: Our own elaboration based on data from (all cryptocurrencies— Investing.com 2018).

DEFINITION OF CRYPTOCURRENCY AND CHARACTERISTICS

One of the first definitions of cryptocurrency on which this article was based originates from the United States of America. It was issued by the New York Department of Financial Services 2014 and the New York Department of Financial Services 2017 and defines cryptocurrencies as, "any type of digital unit, created or obtained through mathematical calculation, whose system is based on the internet and which is used as a means of change or a form of digitally stored value". According to Pacheco Jiménez (2016), "cryptocurrencies are configured as a digital means of exchange whose fundamental difference with electronic money is the inclusion of cryptography as a security guarantor". Regarding the characteristics of these virtual currencies, we can point out the following (Rodríguez Herrera 2014):

1. Cryptocurrencies are decentralized virtual currencies. This means that there

is no regulatory authority. However, there is a so-called "ledger", which records all the transactions in the order in which they take place, as well as the date (Zúñiga 2015).

2. The so-called "ledger" is called Blockchain. Since this book is networked, there is not just one copy of the record; instead, it is a network that allows virtually everyone to have access to the transaction log. When there is a new transaction, all users automatically receive the update. This prevents users from spending the same coin twice.
3. Users cannot falsify the currency. The reason is simple: The units "print" from very complex mathematical problems. Once each time period is determined, a new mathematical problem is created. From there, users attempt to solve it. The user who solves the problem first earns a cryptocurrency as a "prize". This compilation process is called "mining".
4. The certification of the transactions described above is carried out by users connected to the network, who are called "miners". These users are those who lend their computational infrastructure. The objective is to verify the transaction with the incentive to obtain "a prize" in the form of a cryptocurrency (Varios 2013).
5. As soon as a user acquires a cryptocurrency, their possession is certified, and it is already in their complete property. This is deposited in a digital wallet, presented on your mobile phone, computer, tablet, etc., or online, in servers for safekeeping and the exchange of cryptocurrencies.

Having evaluated the characteristics of so-called virtual currencies, it is evident that they present both similarities and differences with traditional currencies.

EQUATING VIRTUAL CURRENCY WITH OTHER CURRENCIES

The first question to determine is whether Spanish legislators consider or equate the current tax regime to apply any currency, such as the Euro, the American Dollar, and the British Pound, to virtual currencies.

The first comparison between virtual and other currencies can be found in the doctrine of the European Union (Case C 264/14, litigation between the Skatteverket-Swedish tax administration and Mr. Hedqvist., 2015)4. The Judgment of the Court of Justice of the European Union of 22 October 2013 equates the effects on value-added tax and virtual currency with those of traditional currencies. The passage indicates that, "they constitute exempt operations of the V.A.T. According to that provision, services such as those at issue in the main proceedings, consisting of a traditional exchange of currency by units of the virtual currency 'bitcoin', and vice versa" (Barciela Pérez 2016).

Another example of equalization exists in the resolution issued by the General Directorate for Planning and Gaming, after consultation by a law firm. They asked if the Bitcoin was considered a means of payment for the purpose of the game (Consultation General Directorate for the Regulation of Betting, S.U.G./00239 of 15 April 2014. Issue: Betting using Bitcoin, 2014)5. This essentially equates the virtual currency to euros or dollars in the case of bets.

Finally, and much more importantly for tax purposes, the General Directorate of Taxes Binding Consultation V2846-15 of 1 October 2015, issued by the General Directorate of Taxes, states the following: "Bitcoin virtual currencies act as a means of payment and by their own characteristics should be understood included within the concept" other commercial effects "so their transmission should be subject and exempt from the Tax"6.

Therefore, the equation between virtual currency and traditional currencies is evident. Next, we proceeded to analyze the fiscal implications in the Spanish tax system of operations related to cryptocurrencies.

The Spanish Supreme Court has ruled on Bitcoin and has established that this cryptocurrency cannot be considered as money for the purposes of civil liability, considering that it is an intangible asset of consideration or exchange in any bilateral transaction that the contracting parties accept: They " . . . cannot agree on the restitution of the bitcoins, being appropriate to repair the damage and compensate the damages in the manner indicated in the judgment of instance, that is, returned to the injured the amount of themonetary contribution made (damage), with an increase as a result of the profitability that the price of the bitcoin units would have offered between the time of the investment and the expiration date of their respective contracts" (use of bitcoin as a payment instrument derived from civil liability, 2019)7.

However, the previous sentence appears to contradict the recommendation given by the European Bank Authority to the European Commission (European Banking Authority 2019). The recommendation in relation to so-called cryptocurrencies calls on member states to recognize the existence of these means of payment. In turn, it proposes to monitor them to avoid their use for "money laundering" and to establish a common legislation when divergences begin to be observed among the states regarding their regulation.

However, a judicial sentence or a binding consultation in which said equalization is established is lacking.

Regarding this comparison between virtual and traditional currencies, Gómez Jiménez (2014), and Miras Martín (2017) developed several studies. For the purposes of the Italian regulations (Palumbo 2016), a similar analysis was carried out, as well as in the case of new technologies and the need for a global taxation strategy (Náñez Alonso 2018).

The following table (Table 2), shows the current situation in European countries about the legalities in the operation with cryptocurrencies:

Table 2. Current status of cryptocurrencies in Europe.

European Country	Current Status of Cryptocurrencies
Austria	Austria has not currently regulated cryptocurrencies. There is no regulation or ruling on how to deal with cryptocurrencies.
Belgium	Belgium has not regulated cryptocurrencies. There is no regulation or ruling on how to deal with cryptocurrencies. Note: Belgium is waiting for a common European regulation. They have issued a warning to consumers that there is no government supervision.
Bulgaria	Bulgaria has accepted the digital currency. Bulgarian National Revenue Agency had issued new tax guidelines that establish that *"incomes from the sale of digital currencies such as Bitcoin will be treated as income from the sale of financial assets paying a 10% rate."*
Croatia	On December 6, 2013, the National Bank of Croatia (NBC) concluded that Bitcoin is not illegal in Croatia. However, there is no regulation or ruling on how to deal with virtual currencies.
Cyprus	There is no regulation or ruling on how to deal with cryptocurrencies. On December 11, 2013, the Central Bank of Cyprus issued a statement on Bitcoins, stating that *"CBC considers the use of any kind of virtual money as particularly dangerous, given that it is not under any regulatory system and its operation is not controlled."*
Czech Republic	There is no regulation or ruling on how to deal cryptocurrencies. The Czech government recently introduced a law that requires virtual currency exchanges to determine the identity of customers.
Denmark	The Danish government and the Financial Supervisory Authority have announced that Bitcoin companies will be taxed normally, and people will not be subject to trade taxes. *"The Danish central bank is considering a digital-only e-krone."*
Estonia	There is no regulation or ruling on how to deal with cryptocurrencies. Bitcoins and digital currencies could be declared as alternative means of payment, subjecting them to liabilities for capital gains and VAT.
Finland	The Finnish regulatory agency has stated that Bitcoin should be treated as an asset and subject to VAT and capital gains, although capital gains losses would not be deductible.
France	France has not currently regulated cryptocurrencies. There is no regulation or ruling on how to deal with cryptocurrencies.
Germany	The German government published a report in August 2013 that said Bitcoins should be treated as a commercial activity and, therefore, would be subject to capital gains taxes unless they were withheld for a year or more. The German Federal Ministry of Finance clarified its position by saying that Bitcoin *"should be treated as a unit of account and private money and, therefore, should be subject to sales and VAT taxes."*
Greece	Greece has not currently regulated cryptocurrencies. There is no regulation or ruling on how to deal with cryptocurrencies.
Ireland	Ireland has not currently regulated cryptocurrencies. There is no regulation or ruling on how to deal with cryptocurrencies.
Italy	Italian tax authorities are treating Bitcoin as a form of currency. They have stated that purchases and sales made with Bitcoin remain exempt from VAT. Also, they are applying income tax to speculative uses of Bitcoin, or events in which profits are earned during a sale.
Latvia	Latvia has not currently regulated cryptocurrencies. There is no regulation or ruling on how to deal with cryptocurrencies.
Lithuania	Lithuania has not currently regulated cryptocurrencies. There is no regulation or ruling on how to deal with cryptocurrencies.
Netherlands	In June 2013, the Dutch Ministry of Finance published a report that gave Bitcoin the status of a barter item, which meant that it did not need specific licenses or compliance requirements. *"Bitcoin is not a financial product as defined by law; the purchase or sale of Bitcoins is also not a financial service, so the financial services law cannot be applied"*
Poland	Poland as officially recognized the commerce and mining of cryptocurrencies as an *"official economic activity"*. Note: Poland is waiting for a common European regulation.

Portugal	Portugal has not currently regulated cryptocurrencies. There is no regulation or ruling on how to deal with cryptocurrencies.
United Kingdom	The Bank of England has indicated that cryptocurrencies should be subject to the Capital Gains Tax.
Sweden	The Swedish regulator agency has declared Bitcoin as a legal currency

Source: Our own elaboration based on the Bulgarian National Revenue Agency, the National Bank of Croatia, Central Bank of Cyprus, the Financial Supervisory Authority of Denmark, the Finnish regulatory Agency, Italian Tax authorities, the Dutch Ministry of Finance, and the Bank of England; (Global Cryptocurrency Benchmarking Study 2017) and (Blockchain 2019).

The Spanish case was analyzed initially, as well as the situation in Europe. The following sections analyze the situation for tax purposes in depth in Spain.

CRYPTOCURRENCIES AND THEIR TAXATION IN PERSONAL INCOME TAX

After verifying the comparison between the virtual currency and other currencies, we analyzed the implications for the purposes of personal income tax (hereinafter, P.I.T.) that may derive from operations related to cryptocurrencies.

Capital Gains and Losses Derived from the Purchase and Sale of Cryptocurrencies

Once an individual has acquired cryptocurrencies and subsequently decides to sell them, they must pay taxes for the purposes of the P.I.T. for the possible capital gain or loss experienced. This is based on article 33 of the Spanish P.I.T. law, which defines capital gains and losses as, “the variations in the value of the taxpayer’s assets that are revealed on the occasion of any alteration in the composition of the same”.The Spanish Tax Agency reinforces this issue in the Binding Consultation General Directorate of Taxes V-1029-15 of March 30 2015, since they are assimilated to “rights that in traffic are considered similar to money, such as the delivery of money”.

The subject must therefore pay the difference between the value of the cryptocurrency transmission and its acquisition value10. The difference, if it is positive, is then inserted into the tax base of savings. It must then be submitted to the scales of the P.I.T., specifically to the scale applicable to the savings base11. In the wake of this situation, an interesting question arises: Should the subject submit the 720-form relative to the declaration of assets located abroad? This question is derived from the basic question of the location of virtual wallets that contain cryptocurrencies.

The “problem” is that, technically, virtual wallets do not have a specific geographical location. The solution to this problem can be derived from the application of article two in the P.I.T., which states that “it is the object of this tax

. . . property gains and losses and income imputations that are established by law, regardless of where they were produced and any that is the residence of payer", that is, by application of the so-called criterion of personal subjection.

A question not resolved until 2018 is what will happen to the subjects whose capital gain derives from the purchase of cryptocurrencies with other cryptocurrencies. The Tax Agency ruled on this specific situation through the Binding Consultation General Directorate of Taxes V0999-18 of April 18 201813. This activity would fit perfectly in the section on taxation for capital gain or loss for the purposes of the P.I.T., as indicated in the paragraphs above. "The consultant, regardless of its economic activity, acquired as an investment« bitcoin »virtual currencies that later exchanged for other« nxt »virtual currencies, which, in turn, exchanged for different virtual currencies such as« ethereum », « bitcoin » and « ripple », having carried out these operations on exchange platforms based in foreign territory". A part of these last virtual currencies was exchanged into euros. The situation was evidently evaluated as follows:

1º If, for the purposes of the personal income tax, the exchange operations between different virtual currencies originated obtaining income, this consultation would be crucial since it would not only solve the problem of paying the P.I.T. but also show how losses should be integrated and the need to comply with the formal requirement to communicate this activity via the official model of the tax agency.

The Spanish tax agency replied that with respect to the first issue, an exchange between different virtual currencies made by the taxpayer, aside from an economic activity, results in the obtainment of an income qualified as a capital gain or loss, in accordance with the aforementioned article 33.1. Therefore, it would be necessary to integrate it as a capital gain or loss following tax rules.

2º As there was an answer to the previous issue, the question of how to quantify the patrimonial alteration, since there are no official quotes, was posed. Regarding the second question—how these rents should be quantified—the provisions of articles 34.1.(a), 35, and 37.1.(h) of the P.I.T. Law applies. Article 34.1.(a) establishes that the amount of patrimonial gains or losses is, with the assumption of onerous or lucrative transmission, the difference between the values of acquisition and the transmission of the patrimonial elements: The value of acquisition less the transmission value. Thus, doubt

surrounding such an exchange was addressed.

The issue of the exchange of cryptocurrencies was also resolved in this consultation since it states that "the market value corresponding to virtual currencies that are exchanged, is the one that would correspond to the price agreed for sale between independent subjects at the time of the swap".

3º As the answer to the first question was positive, the next consideration was if an exchange between virtual currencies originated a negative patrimonial variation, how would such loss be integrated into the tax base? According to

Article 46.(b) of the P.I.T. Law, it is also integrated as an offset in the tax base of savings in the form and with the limits established in Article 49 of the same Law.

Then, 4º of the consultant must communicate to the tax administration the realization of the operations of the exchange and sale of virtual currencies through some model.

The solution to this problem was that said operations, capital gains or losses, must be included in the personal income tax return corresponding to the tax period in which the said operations have been carried out, which, if applicable, must be presented by the taxpayer in the form in which the model of declaration of said tax approved by the ministerial order for the tax period is established.

"Mining" of Cryptocurrencies in Personal Income Tax

Once the situation regarding the sale of Cryptocurrencies for the purposes of the P.I.T. is resolved, another important issue is addressed: What happens with users dedicated to the mining of cryptocurrency, known as "miners" or "miners"? We can understand the terms "miner" and "miners" as referring to a natural or legal person dedicated to generating or participating in the creation of virtual currency (Frequently asked questions—Bitcoin 2018).

Again, the Spanish Tax Agency, according to the General Directorate of Taxes Binding Consultation V3625-16, of 31 August 2016, provides the solution to this question, whereby the consultant is dedicated to the mining of Bitcoin and to obtaining a commission and a Bitcoin number as compensation for such work.

In order to avoid repeating the question already analyzed for the purposes of the V.A.T., the answer provided indicates that, " . . . we are facing an economic activity subject to the Tax on Economic Activities. However, this activity is not included in any of the Rates of the aforementioned tax . . . »".

The query itself also defines what is meant by this type of activity: "The Bitcoin mining operations are those that allow the creation of new blocks from which new Bitcoin are derived and which are remunerated by the system with a bitcoin amount."

Therefore, any individual who performs this type of economic activity and generates income must pay taxes for P.I.T. as a performance derived more from an economic activity.

This implies that the subjects must be registered in the tax on economic activities, in section 831.9 of the first section of the rates of "other financial services not included in other sections" and must pay these returns for P.I.T. like any other activity.

CRYPTOCURRENCIES IN VALUE ADDED TAX

In this section, we addressed the possible tax implications that could arise from the sale of cryptocurrencies for the purpose of value added tax (hereinafter, V.A.T.). Article 20 One, section 18 of the V.A.T. Law, establishes that subjects will be exempt for V.A.T. purposes: "Purchase, sale or exchange operations and similar services that have currency, banknotes and coins that are legal means of payment, except for coins and collection tickets and gold, silver and platinum pieces." This exemption for the purposes of

V.A.T. was also reinforced through binding consultation V1029-15, issued by the General Directorate of Taxes.

The consultant in question was engaged in the purchase and sale of Bitcoin electronic currency, and in his query, he asked about the subject of said activity to the value added tax. The solution is clear: "Bitcoin virtual currencies act as a means of payment and by their own characteristics should be understood included within the concept" of other commercial effects "so that their transmission must be subject to and exempt from the Tax" (Binding Consultation General Directorate of Taxes V-1029-15 of 30 March 2015).19 Therefore, cryptocurrencies are considered as a means of payment, like all traditional currencies.

Thus, they will be exempt from payment of the V.A.T. cryptocurrencies, and are not considered a means of "barter" but a means of virtual payment. In addition, the storage location of virtual wallets resembles a traditional bank account, except for the fact that they contain virtual currencies.

Finally, for the purposes of the V.A.T., the following precision must be clarified: If a subject decides to buy goods with cryptocurrencies, such as a vehicle, t-shirt, etc., they must support the V.A.T. of the transaction. As this applies to the individual making the delivery or providing the service, they are also obliged to pass on the V.A.T. to the consumer.

CRYPTOCURRENCIES ON THE PROPERTY TAX

In the previous sections, reference was made to the so-called "virtual wallet". This refers to the place where cryptocurrencies are accumulated. This virtual purse, which contains cryptocurrencies, introduced the "problem" that technically, a virtual wallet does not have a specific location on the geographical plane.

Leaving aside this question and following the regulations of the property tax (hereinafter P.T.), we remember that according to the first article, the object was "to tax the net worth of natural persons, that is, the group of goods and rights belonging to the taxpayer, minus charges and encumbrances (which reduce their value) as well as personal debts" (Law 19/1991 of the Property Tax, 6 June

1991)20. Adding to the above statement, the fifth article, section a, states: "By personal obligation, natural persons who have their habitual residence in Spanish territory, demanding the tax for the totality of their net patrimony independently of the place where the assets are located, or the rights can be exercised."

We can understand how, for the purposes of the P.T., the geographical location of the virtual wallet is irrelevant. In addition, as cryptocurrencies have already been analyzed, they have been assimilated to traditional currencies, so their accumulation must be treated like a bank account.

Therefore, the way to pay these virtual currencies would be by following article 12 of the law of P.T., as follows: Bank deposits in checking or savings account, either at sight or in term, will be computed by the greater of the following balances: Balance at December 31; or balance average corresponding to the last quarter of the year. To declare the cryptocurrencies, the 714-form must be completed within the annual income statement.

This situation described above has been subsequently reinforced through the Binding Consultation General Directorate of Taxes V0590-18 of 1 March 201823. It states that bitcoin or analogous figures are virtual-type coins that allow the purchase of goods and the payment of services through the Internet in addition to quoting in financial markets, not results. The European Union Court of Justice has recognized its status as a means of payment. From the perspective of the wealth tax, they must be declared along with all other assets in the same way that foreign currency capital would be done—being valued in the market price tax at the date of accrual, that is, on 31 December of each year (article 24 of Law 19/1991, of 6 June), in short, for its equivalent value in euros at that date.

CRYPTOCURRENCIES IN THE TAX ON TRANSFERS OF ASSETS AND DOCUMENTED LEGAL ACTS

As we analyzed previously, matching cryptocurrencies to traditional currencies leaves the door open for their use as a valid means of payment in habitual transactions.

Article 7, the first paragraph of the law regulating the transfer of assets tax, declares that, "They are transferable patrimonial subjects; the onerous transmissions by "donation acts" of all class of goods and rights that integrate the patrimony of the physical or juridical persons." According to the article, the transmissions of the sale of cryptocurrencies seems taxed by this tax. However, article 46, section B of the same legal body establishes that individuals would be exempt from paying the tax "deliveries of money that constitute the price of goods" (Royal Legislative Decree 1/1993 of 24 September, by which the Consolidated Text of the Tax Law on Transfer of Assets and Documented Legal Acts is approved., 1993).

Therefore, these cryptocurrency transmissions appear to be exempt from the payment of tax on capital transfers, following the criterion already applied for the purpose of value added tax, since it is a means of payment of free exchange, and does not require tax payment. The same situation applies to the acquisition of normal currencies.

CRYPTOCURRENCIES IN THE TAX ON INHERITANCE AND DONATIONS

The analysis in this section focuses on the fiscal implications of receiving cryptocurrencies as inheritance or through a donation. To do this, we must verify the regulations governing tax on inheritance and donations (hereinafter T.I.D.).

The third article of the aforementioned law establishes that, “it constitutes the taxable event: The acquisition of goods and rights by inheritance, legacy or any other succession title. The acquisition of goods and rights by donation or any other legal business gratuitously” Law 35/2006 of 18 December of the Inheritance and Donations Tax, 1987).

Regarding the valuation of cryptocurrencies, as they are considered similar to traditional currencies and assimilate to the virtual wallet as well as to a bank account, it should be governed by the valuation regulations contained in article nine, which are, “the net value of the individual acquisition of each successorin succession; or the net value of the assets and rights acquired by the donator in donations. Understanding as such the real value of the goods and rights reduced by the charges and debts that were deductible”.

Therefore, it seems evident that in the case of an inheritance in which the hereditary mass is formed by cryptocurrencies, it would be subject to taxation for the purposes of the T.I.D. The same would happen in the case of a donation of cryptocurrencies; the donee would be obliged to pay for it. Regarding the issue of the location of the virtual wallet containing the cryptocurrencies, this would not be a problem since, a priori, the personal obligation to contribute in both cases would be applicable. Therefore, cryptocurrency should be part of the tax base both in succession and in donation, and should be taxed following the procedure marked, applying the progressive scale, the reductions by groups, and the correction coefficients based on the pre-existing real estate and the group of kinship. An important issue to highlight is the T.I.D. It is a tax assigned to autonomous communities, allowing them to establish their own reductions and bonuses. The taxpayer must check the settlement form to be used.

OTHER ISSUES RELATING TO CRYPTOCURRENCY AND THE TAX SYSTEM

In the next and last section, we analyzed two issues related to the operation of cryptocurrency: On the one hand, the implications derived from the sale of cryptocurrencies through the operation of a cashier, and on the other, the fiscal implications derived from the purchase-sale of cryptocurrencies through the development and exploitation of their own web application. Thirdly, we addressed the "farm for the mining of cryptocurrencies for exploitation and / or commercialization, also developing the activities of purchase and sale of cryptocurrencies, advice, research and development of blockchain technology networks". Fourthly and lastly, the constitution of a limited company dedicated to the mining of Ethers (cryptocurrencies) was analyzed.

Purchase and Sale of Bitcoin Electronic Currency through Vending Machines or ATMs

In this section, we analyzed the situation raised by consulting the General Directorate of Taxes (Binding Consultation General Directorate of Taxes V-1028-15 of 30 March 2015) of a person dedicated to the purchase and sale of Bitcoin electronic currency through vending machines or ATMs. Several questions were raised.

The first concerns subjection to the effects of V.A.T. of said activity. As analyzed previously in the section on cryptocurrencies for V.A.T. purposes, "Bitcoin virtual currencies act as a means of payment and by their own characteristics should be understood as part of the concept of" other commercial effects ", so their transmission should be subject to and exempt from the Tax."

The second issue questions whether the subject must present declarations for the purposes of the V.A.T. even though all the activity carried out is subject but exempt. The answer provided indicates that, "if the consultant performs exclusively exempt transactions included in article 20, such as the purchase and sale of Bitcoin virtual currencies, he will not be obliged to present declarations-liquidations in the terms provided in the Tax Regulation." Therefore, he is released from complying with this tax obligation.

The third issue that was settled in the query was whether the subject must be registered in the tax on economic activities, and if so, in what section. The answer indicates that in the first place, " . . . the provision of Bitcoin buying and selling services through automatic machines constitutes a taxable event of the Tax on Economic Activities, therefore, the same is subject to the aforementioned tax."

On the other hand, regarding the applicable heading, something similar to what has already been analyzed occurs in the case of bitcoin miners: "The provision of services through machines that functionas cashiers or vending

machines, through which the user can buy and sell Bitcoins at market price, as it is an economic activity that is not expressly contemplated in the Tax Rates, it should be classified according to the provisions of the aforementioned rule 8th of the Instruction in section 969.7 of the first section, "Other automatic machines."

Purchase and Sale of Cryptocurrencies through the Development and Exploitation of a Personal Web Application

Another interesting issue raised by a subject whose activity related to cryptocurrency focuses on the purchase and sale of cryptocurrencies through the development and exploitation of their own web application. The subject made a query (Binding Consultation General Directorate of Taxes V-2908-17, of 13 November 2017) about whether his company, which was registered in the 999 group of the first section of the tax rates on economic activities, is in the correct group and heading.

The purchase and sale of cryptocurrencies (mainly Bitcoin) through the development and exploitation of a web application belonging to the client is an activity that is not specified in the tax rates. The response provided by the General Directorate of Taxes through binding consultation is as follows: "The reference activity must be classified under heading 831.9 of the first section," Other financial services," as provided by rule eight of the instruction. In addition, he adds that, " . . . the classification in group 999 of the first section is not appropriate, so the consultant must make the corresponding declaration of withdrawal in the aforementioned 999 group and registration in 831.9 section."

The importance of the resolution of this case is that the tax agency resolved a new question related to operations with critpodivisas: When an individual exploits an exchange website. The heading for the effects in T.E.A. to which a user must be registered, is as follows:

Company Owner of a Farm for the Mining of Cryptocurrencies for Exploitation and/or Commercialization, also Developing the Activities of Buying and Selling Cryptocurrencies, Advice, Research, and Development of Blockchain Technology Networks

In this new case, the business consultant proceeds to manufacture a farm for the mining of cryptocurrencies for exploitation and/or marketing development. At the same time, this indicates that the consultant carries out activities for the sale of cryptocurrencies, advice, research, and development of "blockchain" technology networks. The question that arises is how these types of operations should be taxed for the purposes of value added tax.

According to the Binding Consultation General Directorate of Taxes V2034-18 of 9 July 2018, the case of an entrepreneur or professional carrying out mining

operations was analyzed through the binding consultation of 31 August 31 2016, V3625-16, which indicates that, "the mining operations of Bitcoins are those that allow the creation of new blocks from which new Bitcoins are derived and which are remunerated by the system with a number of Bitcoins." In turn, the following is indicated: " . . . the mining activity does not led to a situation in which there is a relationship between the service provider and the recipient and in which the remuneration paid to the service provider is the same. countervalue of the service provided in the terms provided in the case law of the Court" and, in particular, the most important aspect of this consultation is when it points out (beyond the reference to jurisprudence) that, " . . . in the activity of mining it cannot identify a recipient or effective customer, to the extent that the new Bitcoins are automatically generated by the network."

Consequently, after all the above, "the lack of a direct relationship between the service provided and the consideration received in the terms indicated the mining services object of consultation will not be subject to Value Added Tax."

Therefore, the development of mining activities does not confer the status of an entrepreneur or professional to the consultant and said activity is not subject to the value added tax.

In turn, Bitcoin virtual currencies act as a means of payment and by their own characteristics should be understood as included within the concept "other commercial effects" so their transmission must be subject to and exempt from tax. Therefore, Bitcoins, cryptocurrencies, and other digital currencies are currencies, so the financial services linked to them are exempt from value added tax. On the other hand, the services of advice and research in "blockchain" networks are subject to the value added tax, provided that they are understood to have been made in the territory of application

of the tax, and must be taxed at the general rate of 21%.

Constitution of a Limited Company Dedicated to the Mining of Ethers (Cryptocurrencies)

In the latter case, the subject intends to establish a limited company that will have as its main object of commercial activity the mining of Ethers (another type of cryptocurrency, similar to bitcoin). In this consultation, two issues arose: The subject of the operation to the value added tax and the applicable deductions system. The first was already dealt with in a previous section of this article, so we focus on the second, the one related to the applicable deductions regime.

To resolve this issue, the Binding Consultation General Directorate of Taxes V2670-18 of 2 October 201834 indicates that both mining, activity not subject to value added tax under the conditions indicated, as exempt operations established in Article 20. One of the laws in Law 37/1992 does not confer to the consultant

the right to the deduction of the value added tax borne for carrying out said activities.

CONCLUSIONS

First, it is clear that, despite the existing regulations and the binding consultations issued to date, it is necessary to regulate more precisely the operations and activities related to cryptocurrencies. This fact was reinforced once the instructions given by the European banking regulator were observed to be in agreement (the recognition) and the individual decisions of certain countries were sometimes against it.

Second, for the purposes of personal income tax, the purchase and sale of these must be taxed as a capital gain or loss. If the subject engages in so-called "mining", they must be taxed, as with any other economic activity. Although this is not yet reflected in the law, binding consultations issued by the Spanish General Directorate of Taxes have provided security to companies and individuals that operate with these assets.

Third, regarding the tax on economic activities, the binding consultations, and the epigraphs in which the subject must register when he performs the so-called "mining", or when they use or exploit vending machines or their own web or for their purchase-sale, apply. The mining of bitcoins, website sales, and kiosks for their sale are being gradually implemented in cities and on the web. Therefore, although they have not yet been included in the law, binding consultations issued by the Spanish General Directorate of Taxes provide security to companies and individuals that operate with these assets.

Fourth, for the purposes of value added tax, both the European Court of Justice and the General Directorate of Taxes have made it clear that the sale of these currencies is subject but exempt. In normal traffic operations paid with cryptocurrencies, users must pass/support value added tax as in any otheroperation of delivery or provision of services. Looking at the recommendations given to the European Commission by the European Banking Authority, it would not be unusual for Directive 2006/112/EC (VAT Directive), on the common system of value added tax, to be modified shortly to reflect some of the recommendations.

Fifth, for the purposes of property tax, inheritance and donations tax, and tax on transfers of assets and documented legal acts, although their valuation and taxation for the purposes of these are similar to the regime of traditional currencies, it would be interesting to issue binding consultations that would reinforce this form of taxation.

Funding: This research received no external funding.
Conflicts of Interest: The author declare no conflict of interest.

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